

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LI FENG WANG,

No. C 13-4190 CW

Plaintiff,

ORDER GRANTING  
MOTION TO DISMISS  
(Docket No. 12)

v.

STEVE JOBS, STEVE JOBS' ESTATE  
EXECUTOR, LAURENE POWELL JOBS, et  
al.,

Defendants.

Plaintiff Li Feng Wang, proceeding pro se, brought this action against Defendants Steve Jobs, Steve Jobs' Estate Executor, Laurene Powell Jobs, and "General Agency." Laurene Powell Jobs moves to dismiss the complaint. Plaintiff opposes the motion. The Court took the matter under submission without oral argument and now grants the motion without leave to amend.

## BACKGROUND

Plaintiff's complaint is somewhat garbled but is nevertheless sufficiently intelligible to discern the basic factual allegations underlying her claims. In short, Plaintiff alleges that some unknown corporation or organization -- which she calls, "General Agency" -- subjected her to mind-reading and mind-altering technology without her consent in the fall of 2011. Docket No. 1, Compl. ¶¶ 12-13, 18-19. According to her complaint, her exposure to this technology caused her to become obsessed with Steve Jobs, the late co-founder of Apple Inc., and to begin to have visions of

1 him in her sleep. Id. ¶¶ 20-24, 41, 43. Plaintiff further  
2 alleges that Jobs himself helped design the mind-reading and mind-  
3 altering technology and therefore should be liable, along with his  
4 estate and General Agency, for the severe "emotional distress and  
5 depression" she suffered as a result of her exposure to that  
6 technology. Id. ¶ 47.

7 Plaintiff asserts three causes of action against Defendants:  
8 (1) a violation of her First Amendment rights; (2) negligence; and  
9 (3) professional malpractice or products liability. Id. ¶¶ 51-78.  
10 She seeks three million dollars in damages. Id. ¶ 82.

## LEGAL STANDARDS

12 | I. Failure to State a Claim

A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). On a motion under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint does not give the defendant fair notice of a legally cognizable claim and the grounds on which it rests. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). In considering whether the complaint is sufficient to state a claim, the court will take all material allegations as true and construe them in the light most favorable to the plaintiff. NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). However, this principle is inapplicable to legal conclusions; "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are not taken as true. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Twombly, 550 U.S. at 555)

1       When granting a motion to dismiss, the court is generally  
2 required to grant the plaintiff leave to amend, even if no request  
3 to amend the pleading was made, unless amendment would be futile.  
4 Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911  
5 F.2d 242, 246-47 (9th Cir. 1990). In determining whether  
6 amendment would be futile, the court examines whether the  
7 complaint could be amended to cure the defect requiring dismissal  
8 "without contradicting any of the allegations of [the] original  
9 complaint." Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th  
10 Cir. 1990).

11      II. Subject Matter Jurisdiction

12      Subject matter jurisdiction is a threshold issue which goes  
13 to the power of the court to hear the case. Federal subject  
14 matter jurisdiction must exist at the time the action is  
15 commenced. Morongo Band of Mission Indians v. Cal. State Bd. of  
16 Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988). A federal  
17 court is presumed to lack subject matter jurisdiction until the  
18 contrary affirmatively appears. Stock W., Inc. v. Confederated  
19 Tribes, 873 F.2d 1221, 1225 (9th Cir. 1989).

20      Dismissal is appropriate under Rule 12(b)(1) when the  
21 district court lacks subject matter jurisdiction over the claim.  
22 Fed. R. Civ. P. 12(b)(1). A Rule 12(b)(1) motion may either  
23 attack the sufficiency of the pleadings to establish federal  
24 jurisdiction, or allege an actual lack of jurisdiction which  
25 exists despite the formal sufficiency of the complaint. Thornhill  
26 Publ'g Co. v. Gen. Tel. & Elecs. Corp., 594 F.2d 730, 733 (9th  
27 Cir. 1979); Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir.  
28 1987).

## DISCUSSION

## A. First Amendment Violation (First Cause of Action)

Plaintiff alleges that Defendants' use of mind-reading and mind-altering technologies "significantly minimized and chilled [her] freedom of thought, speech and expression" under the First Amendment. Compl. ¶ 51.

"In order to demonstrate a First Amendment violation, a plaintiff must provide evidence showing that 'by his actions [the defendant] deterred or chilled [the plaintiff's] political speech and such deterrence was a substantial or motivating factor in [the defendant's] conduct.'" Mendocino Envtl. Ctr. v. Mendocino Cnty., 192 F.3d 1283, 1300 (9th Cir. 1999) (alterations in original; citing Sloman v. Tadlock, 21 F.3d 1462, 1469 (9th Cir. 1994)).

The plaintiff must also allege that the defendant is a state actor. Dworkin v. Hustler Magazine Inc., 867 F.2d 1188, 1200 (9th Cir. 1989) (affirming dismissal of First Amendment claim brought against private actors).

Here, Plaintiff has not alleged that Defendants intended to chill or deter her political speech nor has she alleged that any Defendant is a state actor. In fact, Plaintiff appears to allege explicitly that Defendants are not state actors. Compl. ¶ 54 ("Defendants' MindReading conducts are not under Governmental [sic] system."). She has also failed to specify what type of mind-altering technologies Defendants used.<sup>1</sup> Although "several

<sup>1</sup> The complaint alludes to a mind-control system involving some combination of vehicles, robots, videos, cell phones, and supercomputers, Compl. ¶¶ 71-76, but fails to describe this system coherently and, more importantly, fails to allege that Defendants used this system on Plaintiff herself.

1 courts have found that compulsory treatment with mind-altering  
2 drugs may invade a patient's First Amendment interests in being  
3 able to think and communicate freely," Lojuk v. Quandt, 706 F.2d  
4 1456, 1465 (7th Cir. 1983), Plaintiff here has not alleged that  
5 Defendants administered any such drugs to her or otherwise sought  
6 to treat her as a patient. As such, she has not alleged any  
7 plausible facts that suggest that Defendants sought to read or  
8 alter her thoughts. Cf. Riles v. Geithner, 693 F. Supp. 2d 1, 3  
9 (D.D.C. 2009) (dismissing complaint and noting implausibility of  
10 plaintiff's allegations that defendants were "using mind-reading  
11 technology to (among other things) monitor his thoughts, intrude  
12 upon his private affairs, turn others against him, and destroy his  
13 livelihood"); Glasser v. Central Intelligence Agency, 2003 WL  
14 21209705, at \*2 (N.D. Cal.) (dismissing action with prejudice  
15 under 28 U.S.C. § 1915 where the complaint "contained fantastical  
16 allegations of the CIA's 'mind control' over the Plaintiff"  
17 because such "allegations are too implausible to be credible").

18 Accordingly, Plaintiff has failed to state a claim under the  
19 First Amendment. Because she cannot amend her complaint to state  
20 a valid claim without contradicting her earlier allegation that  
21 Defendants are not state actors, her First Amendment claim is  
22 dismissed with prejudice. Reddy, 912 F.2d at 296; see also Silva  
23 v. Di Vittorio, 658 F.3d 1090, 1101 (9th Cir. 2011) (recognizing  
24 that, while courts must "construe pro se complaints liberally,"  
25 they may nevertheless "dismiss a pro se complaint for failure to  
26 state a claim if 'it appears beyond doubt that the plaintiff can  
27 prove no set of facts in support of his claim which would entitle  
28 him to relief'").

## 1 B. Negligence (Second Cause of Action)

2 Plaintiff alleges that Defendants behaved negligently in  
3 conducting mind-reading experiments on her.4 To state a valid negligence claim, the plaintiff must allege  
5 that (1) the defendant owes a legal duty of care to the plaintiff;  
6 (2) the defendant breached that duty; (3) the plaintiff was  
7 injured; and (4) the plaintiff's injuries resulted from the  
8 defendant's breach. Hoyem v. Manhattan Beach City Sch. Dist., 22  
9 Cal. 3d 508, 513 (1978). "The legal duty of care may be of two  
10 general types: (a) the duty of a person to use ordinary care in  
11 activities from which harm might reasonably be anticipated, or  
12 (b) an affirmative duty where the person occupies a particular  
13 relationship to others." McGettigan v. Bay Area Rapid Transit  
14 Dist., 57 Cal. App. 4th 1011, 1016-17 (1997).15 Plaintiff has failed to identify any affirmative duty that  
16 Defendants owed her and failed to explain how they might have  
17 breached their ordinary duty of care. Moreover, as explained  
18 above, Plaintiff's allegations of mind-reading and mind-control  
19 are not plausible. See Riles, 693 F. Supp. 2d at 3. And, even if  
20 these allegations were plausible, Plaintiff has not provided  
21 adequate detail about Defendants' specific conduct to state a  
22 claim against them. For all of these reasons, her negligence  
23 claim must be dismissed under Rule 12(b)(6).24 In addition, the claim must also be dismissed under Rule  
25 12(b)(1) for lack of subject matter jurisdiction. The only basis  
26 for federal jurisdiction that Plaintiff has identified here is  
27 federal question jurisdiction over her First Amendment claim and  
28 supplemental jurisdiction over her other two claims, which both

1 arise under state law. Compl. ¶¶ 1-3 (citing 28 U.S.C. §§ 1331,  
2 1367). However, because her First Amendment claim must be  
3 dismissed with prejudice for the reasons outlined above, Plaintiff  
4 cannot rely on that claim as a basis for exercising supplemental  
5 jurisdiction over her other claims. The Court therefore may not  
6 exercise subject matter jurisdiction over her negligence claim.<sup>2</sup>  
7 Because amendment of the claim would not cure this jurisdictional  
8 defect, Plaintiff's negligence claim is dismissed without leave to  
9 amend, but without prejudice to filing in state court. See Silva,  
10 658 F.3d at 1101.

11 C. Professional Malpractice or Products Liability (Third  
12 Cause of Action)

13 As with her negligence claim, Plaintiff has failed to allege  
14 any plausible facts to support her malpractice or products  
15 liability claim. Furthermore, she has failed to identify a basis  
16 for exercising supplemental jurisdiction over this state law claim  
17 in light of the dismissal of her First Amendment claim. Thus,  
18 this claim, like her negligence claim, must be dismissed without  
19 leave to amend, but without prejudice to filing in state court.

20 Id.

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22 <sup>2</sup> Ordinarily, the "decision whether to continue to exercise  
23 supplemental jurisdiction over state law claims after all federal claims  
24 have been dismissed lies within the district court's discretion."  
Foster v. Wilson, 504 F.3d 1046, 1051 (9th Cir. 2007). However, the  
25 Ninth Circuit has specifically cautioned district courts against  
26 exercising jurisdiction over pendent state claims when the dismissed  
federal claims are "absolutely devoid of merit or obviously frivolous."  
Gilder v. PGA Tour, Inc., 936 F.2d 417, 421 (9th Cir. 1991).  
27 Plaintiff's First Amendment claim falls squarely within this category  
28 because it is based on implausible factual allegations and brought  
against non-state actors. Accordingly, it is inappropriate to retain  
supplemental jurisdiction over her state law claims in this action.

## 1 CONCLUSION

2 For the reasons set forth above, Defendant Laurene Powell  
3 Jobs' motion to dismiss (Docket No. 12) is GRANTED. Although the  
4 other Defendants have not joined the motion, the claims against  
5 them are dismissed, as well. See Silverton v. U.S. Dep't of  
6 Treasury, 644 F.2d 1341, 1345 (9th Cir. 1981) ("A District Court  
7 may properly on its own motion dismiss an action as to defendants  
8 who have not moved to dismiss where such defendants are in a  
9 position similar to that of moving defendants or where claims  
10 against such defendants are integrally related."). Because  
11 amendment would be futile, the complaint is dismissed without  
12 leave to amend but without prejudice to re-filing in state court.

13 Plaintiff's motion for permission to file electronically  
14 (Docket No. 7) is DENIED as moot and her motion for leave to  
15 submit "IBM Research Center News" (Docket No. 15) is DENIED  
16 because it seeks to present irrelevant information not contained  
17 in the complaint.

18 Defendant Laurene Powell Jobs shall recover her costs. The  
19 clerk shall enter judgment and close the file.

20 IT IS SO ORDERED.

21  
22 Dated: 12/19/2013

  
23 CLAUDIA WILKEN  
24 United States District Judge  
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